

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LARYSSA JOCK, et al.,	:	1:08 CV 2875 (JSR)
Plaintiffs,	:	U.S. District Judge Jed S. Rakoff
v.	:	
STERLING JEWELERS INC.,	:	
Defendant.	:	
	:	
	:	

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PARTIES' STATUS REPORT

In accordance with the Court's direction during the October 23, 2020 telephonic conference, the parties submit this Status Report to address the issue remanded to this Court by the United States Court of Appeals for the Second Circuit in its November 18, 2019 Order, and pursuant to its mandate issued to this Court on October 13, 2020.

I. The Remanded Issue Is Moot

In the November 18, 2019 Order, the Second Circuit remanded to this Court to reexamine in the first instance the issue of whether the arbitrator exceeded her authority in certifying an opt-out, as opposed to a mandatory, class. However, as the procedural history summarized below demonstrates, this issue was previously resolved and is moot. Accordingly, there remains no present issue before the Court on remand.

On November 16, 2015, this Court issued its Opinion and Order (the "November 16, 2015 Order"), which confirmed the Class Determination Award in all respects except for the provision allowing members of a class certified under Rule 23(b)(2) to opt out.

Upon consideration of this Court’s November 16, 2015 Order, the arbitrator issued an Amendment to Class Determination Award on March 30, 2016, whereby she modified the Class Determination Award to remove the provision allowing class members to opt out of the certified class.¹

Subsequently, on July 24, 2017, the Second Circuit vacated this Court’s November 16, 2015 Order and remanded for further consideration of whether the arbitrator exceeded her authority in certifying a class that contained absent class members who had not opted in.

Upon remand, Defendant Sterling Jewelers Inc. (“Sterling”) filed a renewed motion to vacate the Class Determination Award as to absent class members. On January 15, 2018, this Court issued its Opinion and Order (the “January 15, 2018 Order”), granting Sterling’s renewed motion and vacating the Class Determination Award as to absent class members. In the January 15, 2018 Order, the Court did not again address the validity of the Award’s former provision allowing class members to opt out, although the Order referenced the provision more generally. *See, e.g.*, January 15, 2018 Order, Dkt. 168 at 2 (“According to Sterling, even though the Arbitrator is planning to permit members of the certified class to opt out, the Arbitrator exceeded her authority by purporting to bind this larger group in any way...”).

On November 18, 2019, the Second Circuit reversed the January 15, 2018 Order, and remanded the case to this Court to reexamine in the first instance the issue of whether the arbitrator exceeded her authority in certifying an opt-out, as opposed to a mandatory, class because that issue was not before the Second Circuit on appeal.

¹ Amendment to Class Determination Award (Mar. 30, 2016), attached hereto as Exhibit 1.

However, that issue was resolved by the arbitrator in her March 30, 2016 Amendment to Class Determination Award, wherein she modified the Class Determination Award to not allow for opt-outs from the certified injunctive and declaratory relief class.

Accordingly, the remanded issue is moot and there is no present issue before this Court.

Dated: October 28, 2020

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Gerald L. Maatman, Jr.

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Respectfully submitted,

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EXHIBIT 1

BEFORE THE AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT AND CLASS ACTION TRIBUNAL

LARYSSA JOCK, CHRISTY	:	
MEIERDIERCKS, MARIA HOUSE,	:	
DENISE MADDOX, LISA McCONNELL,	:	
GLORIA PAGAN, JUDY REED, LINDA	:	
RHODES, NINA SHAHMIRZADI,	:	
LEIGHLA MURPHY, DAWN SOUTO-	:	AAA CASE NO. 11 20 0800 0655
COONS, and MARIE WOLF, individually	:	
and on behalf of all others similarly	:	
situated,	:	
	:	
Claimants,	:	Arbitrator: Kathleen A. Roberts
-against-	:	
	:	
STERLING JEWELERS INC.,	:	
	:	
Respondent.	:	

AMENDMENT TO CLASS DETERMINATION AWARD

Upon consideration of the Order of the United States District Court for the Southern District of New York (J. Rakoff, November 16, 2015), which confirmed the Class Determination Award in all respects except for the provision allowing members of a class certified under Rule 23(b)(2) to opt out, Rule 5(c) of the AAA Supplementary Rules for Class Arbitration, which permits that a Class Determination Award may be altered or amended, and the record and findings herein, the Arbitrator modifies the Class Determination Award as follows:

Pursuant to Rule 5 of the AAA Supplementary Rules for Class Arbitration, I find that class members may not request exclusion from the injunctive and declaratory relief class certified under Fed. R. Civ. P. 23(b)(2) in this arbitration. Claimants' claims for injunctive and declaratory relief will "perforce affect the entire class at once." *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2558 (2011). The class-wide nature of the injunctive and declaratory relief

sought, see Class Determination Award (February 2, 2015) at 103 and 107-112, therefore creates an “exceptional circumstance” that “makes it inappropriate to allow class members to request exclusion.” AAA Supplementary Rule 5(c).

SO ORDERED.



KATHLEEN A. ROBERTS
ARBITRATOR
March 30, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2020, I electronically filed the foregoing Parties' Status Report with the Clerk of the United States District Court, Southern District of New York using the CM/ECF system, which sent notification of such filing to the following:

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